

Report to the Board of Adjustment

Prepared by the Maricopa County Planning and Development Department

Case: BA2005089

Variance

Hearing Date:

August 17, 2005

Agenda Item:

1

Supervisory District:

3

Applicant:

Leannah Palmire

Property Owner:

Vickie Frazier

Request:

Variances to permit:

- 1) An existing single-family residence to setback 55 feet from the front (west) property line where 65 feet is the minimum required,
- 2) An existing substandard lot area of 41,956 square feet where 43,560 square feet is the minimum required; and
- 3) A proposed lot coverage of 15.9% where 15% is the maximum allowed in the Rural-43 zoning district.

These variances are requested from the following Zoning Ordinance Section(s):

- 1) Section 503, Article 503.4.1a
- 2) Section 503, Article 503.5.1
- 3) Section 503, Article 503.5.4

Site Location:

38507 N. 27th Avenue – 27th Avenue and Desert Hills Drive
(Desert Hills area)

Site Size:

41,956 square feet (0.96 acre)

Existing Zoning:

Rural-43

Current Use:

Residential

Citizen

Support/Opposition: None known

Staff

Recommendation: Approve with stipulations

Existing On-Site and Surrounding Zoning:

1. On-site: Rural-43
North: Rural-43
South: Rural-43
East: Rural-43
West: Rural-43

Existing On-Site and Surrounding Land Use:

2. On-site: Single-family residence
North: Single-family residence
South: Single-family residence
East: Single-family residence under construction
West: 27th Avenue/single-family residence

Background:

3. **February 21, 1990:** The west 40 feet of parent parcel **(203-33-001B)** was purchased by Maricopa County Department of Transportation for a right-of-way easement under docket **90-0076718**.
4. **April 28, 1994:** The parent parcel **(203-33-001B)** was split to create two parcels **203-33-001L** and **-001M** under docket **94-0342978**.
5. **March 2, 2001:** A portion of parcel **203-33-001M** was purchased by Maricopa County Department of Transportation for a right-of-way easement under docket **01-0163592** and parcel **203-33-028** was created therein.
6. **March 23, 2004:** Parcel **203-33-028** was split to create parcels **203-33-028A**, **-028B** (the subject site), **-028C** and **-028D** via Quit Claim Deeds recorded under dockets **04-0295897** through **04-0295900** respectively.
7. **July 13, 2004:** Building permit **B200404544** for a single-family residence was issued.
8. **May 2, 2005:** The current owner took possession of the subject site via Warranty Deed recorded under docket **05-0574061** and rerecorded under docket **05-0702224**.

9. **May 18, 2005:** The applicant had a pre-application meeting with the Planning Department staff.
10. **May 31, 2005:** The applicant applied for these variance requests.
11. **July 13, 2005:** The case was continued to the August 17, 2005 hearing.

Findings:

12. **Maricopa County Department of Transportation:** No response at the time this report was written.
13. **Flood Control District:** No objection to this variance request (see attached memo).
14. **Environmental Services Department:** No objection to this variance report (see attached memo).
15. **New River/Desert Hills Community Association:** No objection to this variance request (see attached memo).

Site Analysis:

16. The subject site is a rectangular shaped lot measuring 145 feet in width and approximately 289 feet in depth for a total area of 41,956 square feet. The property fronts 27th Avenue to the west and takes access directly from 27th Avenue, which is a paved two lane section-line road. The site is enclosed by CMU block fencing and a rolling wood/iron gate. The site is level and free of any topographical hardships and almost all the natural vegetation has been removed during construction. There are a few trees and cacti but it is mostly dirt and seasonal grasses. The property is currently developed with a 3,809 square foot single-family residence and the owner wants to construct a 2,860 square foot detached RV garage. Staff found a building permit that was issued in 2004 for the house and the owner has not yet applied for a permit for the garage.

(Aerial photo on following page)



Aerial view of subject site and surrounding area

17. The following table is included to illustrate and contrast the standards for the underlying zoning district with those proposed by the applicant.

Standard	Rural-43 (Zoning District)	Proposed Standard
Front Yard Setback	65-feet**	55-feet
Rear Yard Setback	40-feet	141.8-feet
Side Yard Setback	30-feet	30-feet
Street Side Setback	20-feet	N/A
Maximum Height	30-feet/2 stories	***
Minimum Lot Area	43,560 sq. ft.	41,956 sq. ft.
Minimum Lot Width	145-feet	145-feet
Lot Coverage	15%	15.9%

*Standards indicated in **bold** do not meet minimum base zoning standards.

**The front yard setback for this lot is 65 feet (40-foot setback + 25-foot MCDOT ROW)

***Information was not provided by applicant.

Land Use Analysis:

18. The subject site, which is zoned Rural-43, is located in the Desert Hills area of the County near the City of Phoenix. This area is primarily residential with large lot properties developed with single-family residences. The subject property is adjoined by single-family homes built with a wide range of materials and building styles. Development in the immediate area is primarily through the lot splitting process although there are two master planned communities in the general area. The Anthem community, located within the County, is approximately 0.50 miles north of the subject site while Tramanto, located in the City of Phoenix, is located approximately 1.50 miles south of the subject site. The immediate area is zoned Rural-43 (County) while the surrounding area is zoned Rural-43, R1-6 R.U.P.D. and R1-8 R.U.P.D. (County) and S-1 (Phoenix)
19. The site is reached off Exit 223, Carefree Highway, then Via Puzzola Drive north through the Tramanto master planned community to Cloud Road and right onto Cloud Road which becomes 27th Avenue as it heads in a northerly direction to the subject site which is approximately 1.50 miles from this point. Desert Hills Drive is approximately 0.50 miles north of the subject site.
20. Staff research found thirteen Board of Adjustment cases in the immediate area of the subject property. Of the thirteen, only four were relevant to this case. Their summaries are as follow:
 - Case **BA2004163** was a variance request to permit an existing single-family residence to setback 28.8 feet from the side (west) property line where 30 feet is the minimum required in the Rural-43 zoning district. The request was approved by the Board of Adjustment with stipulations. The property is located at 3022 W. Tamar Road approximately 0.50 mile southwest of the subject site.
 - Case **BA2003060** was for variance requests to permit: 1) an existing single-family residence to setback 23 feet from the side (west) property line where 30 feet is the minimum required, 2) an existing detached accessory structure to setback 9.5 feet from the side (east) property line where 30 feet is the minimum required, 3) an existing detached accessory structure to setback 11.5 feet from the side (east) property line where 30 feet is the minimum required; and 4) an existing detached accessory structure to setback 44 feet from the front (south) property line where 52.5 feet is the minimum required in the Rural-43 zoning district. These requests were approved by the Board of Adjustment with stipulations. The property is located at 39019 N. 31st Avenue approximately 0.50 mile northwest of the subject site.

- Case **BA2002008** was for a variance request to permit a proposed single-family residence to setback 44 feet from the side (south) property line where 60 feet is the minimum required in the Rural-43 zoning district. The request was approved by the Board of Adjustment with stipulations. The property is located at 37810 N. 31st Avenue approximately 0.67 miles southwest of the subject site.
- Case **BA2000090** was for variance requests to permit: 1) a proposed single-family residence to setback 25 feet from the front (north) property line where 40 feet is the minimum required; and 2) a proposed single-family residence to setback 15 feet from the side (west) property line where 30 feet is the minimum required in the Rural-43 zoning district. These requests were approved by the Board of Adjustment with stipulations. The property is located at the southwest corner of 21st Avenue and Irvine Road approximately 0.67 miles east of the subject site.

Plan Analysis:

21. The applicant originally requested one variance with this application for the existing front yard setback. Staff's review of the site plan submitted by the applicant revealed two additional variances. These variance requests are as follows:

- 1) An existing single-family residence to setback 55 feet from the front (west) property line where 65 feet is the minimum required in the Rural-43 zoning district.

These two variances were added by staff:

- 2) An existing substandard lot area of 41,956 square feet where 43,560 square feet is the minimum required; and
 - 3) A proposed lot coverage of 15.9% where 15% is the maximum allowed in the Rural-43 zoning district.
22. The first request is to allow an existing single-family residence to setback 55 feet from the front (west) property line where 65 feet is the minimum required. The applicant became aware of the fact that the single-family residence did not meet the required front yard setback during a pre-application meeting with staff for the proposed detached accessory structure (garage). When the house was originally permitted in 2004, the builder was informed that the house only needed to be setback 55 feet from the front (west) property line. This was to accommodate the 40-foot front yard setback and a 15-foot right-of-way (ROW) easement for 27th Avenue. The Maricopa County Department of Transportation (MCDOT) has since informed the Planning and Development Department that they are requiring an additional ten feet along this planned alignment for future right-of-way.

23. According to the MCDOT representative, the ultimate half width right-of-way (ROW) for 27th Avenue needs to be 65 feet since it is located on a section line. Currently, 27th Avenue has a half-width of 40 feet; hence the requirement for an additional 10 feet. The only alternative available to the owner would be to remove the 10 feet of the residence which is located within the required front yard setback since the structure cannot be moved and no additional land can be purchased to the west to alleviate the need for this variance request. Staff feels that these are not viable options and since the existing single-family residence was previously permitted in 2004, met the front yard setbacks for the zoning district and only now, with the additional 10 feet of required ROW, does the house not meet the front yard setback, therefore staff recommends that the Board approve this request.
24. The second request is to allow an existing substandard lot area of 41,956 square feet where 43,560 square feet is the minimum required. The lot is free of any physical or topographical hardships but the lot is substandard due to the loss of land for the right-of-way for 27th Avenue. The original parcel was approximately 47,755 square feet before the west 40 feet was sold to Maricopa County for ROW on February 21, 1990. Upon the sale of these 5,800 square feet, the lot became non-conforming with respect to the minimum lot area requirement of the Rural-43 zoning district. Staff agrees with the applicant that the variance was not self-created but instead arose when the County bought a portion of the lot for the 27th Avenue ROW, thus creating the substandard lot area. Staff recommends that this request be approved due to the loss of the west 40 feet of the parcel, that the single-family residence was previously permitted erroneously in 2004, with respect to the required lot area, and that the relief is the minimum necessary to provide the owner with the full use of the property.
25. The third request, to allow a proposed lot coverage of 15.9% where 15% is the maximum allowed in the Rural-43 zoning district, is directly related to the second request. The need for this variance comes about because the owner is proposing to construct a 2,860 square foot detached accessory structure (RV garage). Initially, the owner proposed this structure to conform with the lot coverage requirements of the zoning district. The owner incorrectly based the proposed structure's size on the belief that the lot was 47,755 square feet thereby creating a structure that will no longer adhere to the zoning requirements of the Rural-43 zoning district with reference to lot coverage. If the lot was 47,755 square feet, the need for this variance would be moot since the lot coverage would only be 13.97% and within the allowable lot coverage for this site.
26. The property in question is flat and free of any notable terrain features that might restrict the size and/or location of an accessory structure. In addition, the property is almost an acre in size providing adequate room to construct the proposed accessory structure. Alternatives available to the owner would be to reduce the size of the proposed detached accessory structure so the lot coverage does not exceed the maximum of 15% or to purchase land from an adjacent property. There is no land adjacent to the site available to purchase without causing those surrounding parcels to become substandard in either lot width or area.

27. Staff feels that this variance was not self-created but instead again arose due to the MCDOT purchase of a portion of the site for the 27th Avenue ROW, thus creating the current substandard parcel by reducing the lot size by 5,800 square feet. If the 40 feet of ROW had not been purchased outright, but only reserved as a future right-of-way, then the owner would still have a large enough parcel to construct this detached accessory structure without the need for a variance. Staff recommends that the Board approve this request due to the loss of the west 40 feet of the parcel, which will serve the citizens of Maricopa County, and that the relief is the minimum necessary to provide the owner with the full use of the property.

Recommendation: (BA2005089)

28. Staff recommends **approval** of the variance requests **1, 2 & 3** based on the following:
- The relief requested is the minimum required necessary to provide the owner with full use and enjoyment of the property.
 - These requests were not self created and a hardship exists on the subject site due to the configuration of the property after the right-of-way was acquired.
 - There is a unique circumstance on the site due to the erroneous granting of a building permit.
 - These requests do not conflict with the intent of the Zoning Ordinance.

Subject to the following stipulations:

- a) General compliance with the revised site plan entitled First Choice Home Group dated June 28, 2004 and stamped received July 12, 2005.
 - b) The owner shall obtain all necessary permits and/or clearances prior to commencing construction.
29. If the Board finds that a reasonable use of the property can be made without these variances, then these requests should be denied.

mjf

Attachments: Case Map BA2005089
Zoning Map
Assessor Map
Site Plan
Application
Supplemental Questionnaire
Photographs (4 pages)
Easement and Agreement for Highway Purposes Record
Environmental Services Memo
Flood Control District Memo
New River/Desert Hills Community Association Memo